IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.1.2007

CORAM:

THE HONOURABLE MR.JUSTICE F.M.IBRAHIM KALIFULLA
AND
THE HONOURABLE MR.JUSTICE M.E.N.PATRUDU

W.P.No.49053 of 2006

1. M.Siva, Assistant
2. R.Devan, Revenue Asst. (Retd.)
3. S.Kuppan, Revenue Assistant (Retd.)
4. V.Paranthaman, Revenue Assistant
5. N.Narayanan, Revenue Assistant
6. S.Rajendran, Revenue Assistant
7. S.Raju, Revenue Assistant
8. V.Sridhar, Revenue Assistant
9. R.Munusamy, Revenue Assistant .. Petitioners

vs.

1. The Commissioner,
   Pallavaram Municipality,
   Pallavaram, Chennai-44.

2. The Registrar,
   Tamil Nadu State Administrative Tribunal,
   High Court Building, Chennai-600 104.
   (Given up as no relief is claimed against
   the second respondent) .. Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus, calling for the records culminating in the passing of the common proceedings of the first respondent Municipality in Na.Ka.No.1846/2002/C1, dated 26.3.2002, as well as the common order of the Tamil Nadu State Administrative Tribunal made in O.A.Nos.1946 to 1949, 1951 to 1953, 1955 and 1956 of 2002, dated 22.10.2002, quash the same in so far as they are against the petitioners herein, and consequently issue a Mandamus directing the first respondent to pay the petitioners herein their with-held increments, retirement benefits and pension, wherever concerned pursuant to the above order of the Tribunal.

For petitioners : Mr.D.Peter Francis
For respondent-1: Mrs.D.Geetha, Addl.G.P.

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

ORDER

(The Order of the Court made by F.M.Ibrahim Kalifulla,J)

Mrs.D.Geetha, learned Additional Government Pleader takes notice for the first respondent-Municipality.

2. The petitioners are aggrieved by the common order of the Tribunal dated 22.10.2002 passed in O.A.Nos.1946 of 2002 etc. By the said common order, while dealing with the case of 15 employees of the first respondent-Municipality and while examining the correctness of the order of the first respondent-Municipality, dated 26.3.2002, in and by which, the first respondent-Municipality sought to recover the property tax arrears from the petitioners and other employees, which became time barred during the relevant period when they were employed in the first respondent-Municipality as Revenue Assistants and similar other posts and who were stated to be in-charge of the collection of property tax from the house owners, the Tribunal took the view that the petitioners were liable to be punished for their inaction in the discharge of the duties as regards collection of property tax from the house owners, but felt that instead of ordering recovery of huge amount from the salary of the petitioners, the petitioners can be imposed with a punishment of stoppage of increment with cumulative effect and thereby, the first respondent would be able to save considerable amount. In effect, the Tribunal imposed the punishment on the petitioners by modifying the order dated 26.3.2002 of the first respondent-Municipality by holding that the petitioners will be inflicted with a punishment of stoppage of increment with cumulative effect for a period of five years.

3. One of the applicants in the above said cases before the Tribunal, by name Muthurameswaran preferred W.P.No.26394 of 2004 and the said Writ Petition came to be disposed of by a Division Bench of this Court, by order dated 16.9.2004. The Division Bench followed the judgment of this Court dated 11.8.2004 passed in W.P.No.22454 of 2004, wherein another judgment reported in 1988 Writ L.R. 38 (V.Nagarajan vs. Commissioner, Salem Municipality) was followed.

4. The very same judgment of the Division Bench of this Court in W.P.No.26394 of 2004, dated 16.9.2004, was subsequently followed by the First Bench of this Court in W.A.No.584 of 2005, judgment dated 23.3.2005, to which one of us (F.M.Ibrahim Kalifulla,J) was a member.

5. In fact, when we peruse the earlier judgment of this Court reported in 1988 Writ L.R. 38 (cited supra), which came to be followed by the subsequent Division Bench of this Court, this Court has tacitly stated the legal position as under: (in 1988 Writ L.R. 38):

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

"1. The petitioner is a Bill Collector of the respondent. He is being penalised and is being called upon to pay the profession taxes, on the ground, he allowed their collection and recovery from the tax payers become time-barred. The view of this Court with regard to liability of the Bill Collector of a Municipality to recoup it on the allegation of his failure to collect the taxes and allowing them to become time barred, has been expressed by Mohan,J. in A.Selvaraj and others v. The Commissioner, Tiruvarur Municipality (W.Ps.3364 to 3369 of 1976, order dated 23.11.1976), saying--

> "Having regard to these provisions, I find it rather impossible to appreciate the stand of the Municipality as to how a Bill Collector could cause pecuniary loss to the Municipality by his failure to collect the taxes. Firstly, it does not lie within his powers to allow the recovery of taxes to become time barred. The very elaborate procedure relating to collection of taxes mentioned in paragraph 65 of Municipal Volume I would clearly indicate that it is the duty of the Executive Officer to have periodic verification of the arrears. If he had failed to do the duty and thereby the arrears of tax had become time-barred for recovery, that liability cannot be passed on to the Bill Collector."

The above view has been followed by V.Ramaswami,J, as he then was, in S.Nagarajan v. Commissioner of Ramanathapuram Municipality (W.P.3221 of 1977, order dated 29.2.1980), by Padmanabhan,J. in S.Nagarajan v. Commissioner, Ramanathapuram Municipality (W.Ps.3911 of 1977, order dated 28.4.1980), and by me in S.Srinivasan and others v. The Special Officer, Tiruvallur Municipality (W.P.Nos.3421 to 3426 of 1978, order dated 4.2.1981). My attention has not been drawn to any pronouncement of this Court, taking a contrary view. The respondent in the present case seemed to have acted against the petitioner under the Tamil Nadu Municipal Service (Discipline and Appeal) Rules, but withheld recovery process on account of stay by the Government. Now, by virtue of the Government vacating the stay, the process of recovery from the salary of the petitioner is being set in motion by the present order of the respondent. It is only in that context, a

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

writ of Mandamus is being asked for by the petitioner, to forbear the respondent from recovering from the salary of the petitioner, the time-barred profession taxes. Basically, there are no grounds at all to pin down the liability on the petitioner, as now being done. The proceedings taken in this behalf are the result of a misconception of the legal position. They have to stand ignored and cannot be implemented. Taking note of the ration of this Court, I have to hold that the petitioner cannot be mulcted with liability on this account. In view of this, this writ petition so far as the petitioner is concerned, is allowed. No costs."

6. In the light of the consistent view of this Court in the above referred to judgments, the orders impugned in this Writ Petition cannot be sustained. We have to reiterate that it is not for the Tribunal to have delved into the question as to what should be the punishment to be imposed on the petitioners. In any event, having regard to the overwhelming authorities on this issue in the various decisions mentioned above, we are convinced that the petitioners are entitled to succeed.

7. Accordingly, the Writ Petition stands allowed and the orders impugned, namely the common order of the Tribunal, dated 22.10.2002 passed in O.A.No.1946 of 2002 etc. as well as well as the order of the first respondent-Municipality, dated 26.3.2002, stand quashed. No costs.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

cs

To

The Commissioner,
Pallavaram Municipality,
Pallavaram, Chennai-44.

1 cc To Mr.D.Peter Francis, Advocate, SR.4894.

W.P.No.49053 of 2006

RS(CO)
RVL 02.02.2007

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/